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OFFICE OF PETITIONS

In re Application of
Seeley, Lynch, Myers, Lewis, Lloyd & Kayfes
Application No.: 10/607,517
Filed: June 26, 2003
Attorney Docket No.: P2002,0542

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed March 9, 2004 (certificate of mailing date March 4, 2004).

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on June 26, 2003 without an executed oath or declaration. The instant Rule 47 petition was filed because petitioners allege Charles Seeley, Jason Lewis, Stacey Lloyd and Paul Kayfes are not available to execute the declaration.

A grantable petition under 37 CFR 1.47(a) requires

- (1) a petition including proof of the pertinent facts establishing that the joint inventor(s) refuses to join, or cannot be found or reached after diligent effort,
- (2) a proper oath or Declaration executed by the available joint inventor(s),
- (3) the fee of \$130 as specified in 37 CFR § 1.17(h), and
- (4) the last known address of the omitted inventor(s).

This petition lacks item (1) above.

As to item (1), applicants have failed to establish that the non-signing inventors cannot be located. Petitioners state that Mr. Alwin Rietzel, who is handling the application for Fujitsu Siemens Computer, LLC, has made efforts to obtain the signatures of the non-signing inventors. Petitioners sent letters and application papers to Messrs. Lewis, Lloyd, and Kayfes, but they were not deliverable. A letter and application mailed to Mr. Seeley was delivered, but no response was received from Mr. Seeley.

Petitioners have shown that Mr. Seeley received the letter and application papers. Because he did not respond to the request that he sign the declaration, petitioners have established Mr. Seeley's constructive refusal to sign the declaration.

Regarding Messrs. Lewis, Lloyd and Kayfes, where inability to find or reach a nonsigning inventor is alleged, an affidavit or declaration of facts should be submitted that fully describes

the exact facts which are relied on to establish that a **diligent effort** was made to locate the nonsigning inventor.

The affidavit or declaration of facts must be signed, where at all possible, by a person having *firsthand knowledge* of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, any inquiries of local telephone directory, or any extant national or regional registry, telegrams, searches of Internet databases, and documented inquiries of his last known employer etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

A showing of diligence is critical to obtaining Rule 47 status when an inventor cannot be located or reached. One undeliverable mailing is not sufficient to prove that an inventor cannot be located.

Further correspondence with respect to this matter should be addressed as follows:

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